

## TO BE RESCINDED

5123:2-9-15      **Home and community-based services waivers - supported employment-community under the individual options and level one waivers.**

## (A) Purpose

The purpose of this rule is to define supported employment-community and set forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the service.

## (B) Definitions

- (1) "Acuity assessment instrument" has the same meaning as in rule 5123:2-9-19 of the Administrative Code.
- (2) "Adult day support" has the same meaning as in rule 5123:2-9-17 of the Administrative Code.
- (3) "Agency provider" means an entity that employs persons for the purpose of providing services for which the entity must be certified under rules adopted by the department.
- (4) "Budget limitation" has the same meaning as in rule 5123:2-9-19 of the Administrative Code.
- (5) "County board" means a county board of developmental disabilities.
- (6) "Department" means the Ohio department of developmental disabilities.
- (7) "Fifteen-minute billing unit" means a billing unit that is equivalent to fifteen minutes of actual service delivery time. Minutes of service provided to an eligible individual for adult day support, supported employment-community, supported employment-enclave, vocational habilitation, and/or a combination of adult day support and vocational habilitation may be accrued by one provider over one calendar day. The number of units is equivalent to the total number of minutes of each type of service, as distinguished by service codes, provided during the day to the individual, divided by fifteen minutes. One additional unit of service may be added to this quotient if the remainder equals eight or more minutes of service.
- (8) "Independent provider" means a self-employed person who provides services

for which he or she must be certified under rule 5123:2-2-01 of the Administrative Code and does not employ, either directly or through contract, anyone else to provide the services.

- (9) "Individual" means a person with a developmental disability or for purposes of giving, refusing to give, or withdrawing consent for services, his or her guardian in accordance with section 5126.043 of the Revised Code or other person authorized to give consent.
- (10) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (11) "Integrated community work setting" means the paid employment of an individual in competitive employment, supported employment (as one person or as a member of a group), or self-employment through the operation of a business that takes place outside of a segregated, sheltered, or facility-based program.
- (12) "Mentor" means a person with experience providing direct services to persons with developmental disabilities who is available on a regular basis to provide guidance to new direct support staff regarding techniques and practices that enhance the effectiveness of the direct provision of supported employment-community.
- (13) "Service and support administrator" means a person, regardless of title, employed by or under contract with a county board to perform the functions of service and support administration and who holds the appropriate certification in accordance with rule 5123:2-5-02 of the Administrative Code.
- (14) "Service documentation" means all records and information on one or more documents, including documents that may be created or maintained in electronic software programs, created and maintained contemporaneously with the delivery of services, and kept in a manner as to fully disclose the nature and extent of services delivered that shall include the items delineated in paragraph (E) of this rule to validate payment for medicaid services.
- (15) "Staff intensity" has the same meaning as in rule 5123:2-9-19 of the Administrative Code.
- (16) "Supported employment services" means intensive, ongoing supports that enable participants, for whom competitive employment at or above the minimum wage is unlikely absent the provision of supports, and who because

of their disabilities need supports, to perform in a regular work setting. Supported employment services does not include sheltered work or other similar types of vocational services furnished in specialized facilities.

(17) "Supported employment-community" means supported employment services provided in an integrated community work setting where individuals enrolled in a waiver and persons without disabilities are employed to perform the same or similar work tasks.

(a) Activities that constitute supported employment-community include:

(i) Vocational assessment that is conducted through formal and informal means for the purpose of developing a vocational profile and employment goals. The profile may contain information about the individual's educational background, work history, and job preferences; will identify the individual's strengths, values, interests, abilities, available natural supports, and access to transportation; and will identify the earned and unearned income available to the individual.

(ii) Job development and placement which includes some or all of the following activities provided directly to or on behalf of the individual:

(a) Developing a resume that identifies the individual's job-related and/or relevant vocational experiences;

(b) Training and assisting the individual to develop job-seeking skills;

(c) Targeting jobs on behalf of the individual that are available in the individual's work location of choice;

(d) Assisting the individual to find jobs that are well matched to his or her employment goals;

(e) Developing job opportunities on behalf of the individual through direct and indirect promotional strategies and relationship-building with employers;

(f) Conducting worksite analyses, including customizing jobs; and



with the continuation of his or her employment; and

- (d) Assisting the individual with self-medication or provision of medication administration for prescribed medication and assisting the individual with or performing health-related activities as identified in rule 5123:2-6-01 of the Administrative Code, which a licensed nurse agrees to delegate in accordance with requirements of Chapters 4723., 5123., and 5126. of the Revised Code and rules adopted under those chapters.
- (v) Worksite accessibility which includes some or all of the following activities:

  - (a) Time spent identifying the need for and assuring the provision of reasonable worksite accommodations that allow the individual to gain and retain employment;
  - (b) Time spent assuring the provision of these accommodations through partnership efforts with the employer; and
  - (c) Purchasing or modifying equipment that will be retained by the individual on the current employment site and/or in other settings. The billing unit, service codes, and payment rate that shall be used to obtain payment for the purchase and/or modification of equipment obtained in accordance with this paragraph are contained in appendix A to this rule.
- (vi) Training in self-determination which includes assisting the individual to develop self-advocacy skills, to exercise his or her civil rights, to exercise control and responsibility over the services he or she receives, and to acquire skills that enable him or her to become more independent, productive, and integrated within the community.
- (b) Supported employment-community may also include services and supports that assist an individual to achieve self-employment through the operation of a business. Such assistance may be provided in the individual's home or the residence of another person and may include aiding the individual to identify potential business opportunities, participating in development of a business plan, identifying potential sources of business financing, gaining assistance to launch a business, identifying supports necessary for the individual to operate the

business, and providing ongoing counseling and guidance once the business has been launched. Supported employment-community shall not be used to start-up or operate a business.

(18) "Supported employment-enclave" has the same meaning as in rule 5123:2-9-16 of the Administrative Code.

(19) "Vocational habilitation" has the same meaning in rule 5123:2-9-14 of the Administrative Code.

(C) Provider qualifications

(1) Supported employment-community shall be provided by an independent provider or an agency provider that meets the requirements of this rule and that has a medicaid provider agreement with the Ohio department of job and family services.

(2) An applicant seeking approval to provide supported employment-community shall complete and submit an application and adhere to the requirements of rule 5123:2-2-01 of the Administrative Code except that paragraphs (C)(3)(a), (C)(3)(b), (C)(3)(c), and (K) of that rule do not apply to an independent provider who is the individual's coworker or otherwise employed at the worksite.

(3) Supported employment-community shall be provided by a person who is:

(a) An independent provider who is the individual's coworker or otherwise employed at the worksite as long as the services that are furnished are not part of that person's regular duties for which he or she is compensated by the employer;

(b) An independent provider, other than an independent provider who is the individual's coworker or otherwise employed at the worksite, who has at least one year of full-time, paid work experience or thirty hours of formal training related to supporting individuals to acquire and maintain jobs in the general workforce; or

(c) An employee or contractor of an agency provider.

(4) An independent provider who is the individual's coworker or otherwise employed at the worksite, shall annually complete training in:

- (a) The provisions governing rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code; and
  - (b) The requirements of rule 5123:2-17-02 of the Administrative Code relating to incidents adversely affecting health and safety including a review of health and safety alerts issued by the department since the previous year's training.
- (5) An independent provider, other than an independent provider who is the individual's coworker or otherwise employed at the worksite, shall annually complete at least eight hours of training that enhances his or her skills and competencies relevant to the services he or she provides which shall include, but is not limited to:
- (a) The provisions governing rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code;
  - (b) The requirements of rule 5123:2-17-02 of the Administrative Code relating to incidents adversely affecting health and safety including a review of health and safety alerts issued by the department since the previous year's training; and
  - (c) Services that comprise supported employment-community as it is defined in paragraph (B)(17) of this rule.
- (6) An agency provider shall ensure that each employee, contractor, and employee of a contractor who is engaged in direct provision of supported employment-community successfully completes, within ninety days of employment or contract, either:
- (a) The "Ohio Alliance of Direct Support Professionals Professional Advancement Through Training and Education in Human Services (PATHS) Certificate of Initial Proficiency" program; or
  - (b) An orientation program of at least eight hours that addresses, but is not limited to:
    - (i) Organizational background of the agency provider, including:
      - (a) Mission, vision, values, principles, and goals;

- (b)* Organizational structure;
  - (c)* Key policies, procedures, and work rules;
  - (d)* Ethical and professional conduct and practice;
  - (e)* Avoiding conflicts of interest; and
  - (f)* Working effectively with individuals, families, and other team members.
- (ii) Components of quality care for individuals served, including:
  - (a)* Interpersonal relationships and trust;
  - (b)* Cultural and personal sensitivity;
  - (c)* Effective communication;
  - (d)* Person-centered philosophy and practice;
  - (e)* Development of individual service plans;
  - (f)* Roles and responsibilities of team members; and
  - (g)* Recordkeeping including progress notes and incident/accident reports.
- (iii) Health and safety, including:
  - (a)* Signs and symptoms of illness or injury and procedure for response;
  - (b)* Building/site-specific emergency response plans; and
  - (c)* Program-specific transportation safety.
- (iv) Positive behavior support, including:

- (a) Principles of positive intervention culture;
  - (b) Role of direct service staff in creating a positive culture;
  - (c) General requirements for behavior support plans and intervention strategies and direct service staff role including documentation;
  - (d) Behavior support review and human rights committees; and
  - (e) Crisis intervention techniques.
- (v) Services that comprise supported employment-community as it is defined in paragraph (B)(17) of this rule.
- (7) An agency provider shall ensure that each employee, contractor, and employee of a contractor who is engaged in direct provision of supported employment-community, during the first year of employment or contract with the agency provider:
- (a) Is assigned and has access to a mentor employed by the agency provider or contractor;
  - (b) Successfully completes on-the-job training specific to each individual he or she serves that includes, but is not limited to:
    - (i) Requirements set forth in the individual service plan including skill development goals, service/support activities, behavior support plan, planned interventions, and related documentation requirements;
    - (ii) The individual's preferences and strengths;
    - (iii) The individual's diagnoses and related needs;
    - (iv) The individual's care needs including nutrition, diet and mealtime support, restroom assistance, mobility needs, lifting, and general supervision/support requirements;
    - (v) Medication administration and delegated nursing, as applicable;

- (vi) Teaching techniques and related documentation requirements; and
  - (vii) The employee's or contractor's role regarding management of the individual's funds and related documentation requirements.
- (c) Successfully completes at least eight hours of training specific to the provision of supported employment-community that includes, but is not limited to:
- (i) Skill-building in vocational assessment, job development and placement, job training/coaching, ongoing job supports, worksite accessibility, developing natural supports, personal adjustment, work adjustment, and vocational planning; and
  - (ii) Self-determination which includes assisting the individual to develop self-advocacy skills, to exercise his or her civil rights, to exercise control and responsibility over the services he or she receives, and to acquire skills that enable him or her to become more independent, productive, and integrated within the community.
- (8) An agency provider shall develop and implement a written plan identifying training priorities for employees, contractors, and employees of a contractor who are engaged in direct provision of supported employment-community. The training priorities shall be consistent with the needs of individuals served, best practice, and the provider's mission, vision, and strategic plan. The written plan of training priorities shall describe the method (e.g., written test, skills demonstration, or documented observation by supervisor) that will be used to establish employees' and contractors' competency in areas of training. The written plan of training priorities shall be updated at least once every twelve months and shall identify who is responsible for arranging or providing the training and projected timelines for completion of the training.
- (9) An agency provider shall ensure that each employee, contractor, and employee of a contractor who is engaged in direct provision of supported employment-community, commencing in the second year of employment or contract with the agency provider, annually completes at least eight hours of training, in accordance with the written plan of training priorities.
- (a) The training shall enhance the skills and competencies of the employee or contractor relevant to his or her job responsibilities and shall include, but is not limited to:

- (i) The provisions governing rights of individuals set forth in sections 5123.62 to 5123.64 of the Revised Code;
  - (ii) The requirements of rule 5123:2-17-02 of the Administrative Code relating to incidents adversely affecting health and safety including a review of health and safety alerts issued by the department since the previous year's training;
  - (iii) The requirements relative to the employee's or contractor's role in providing behavior support to the individuals he or she serves; and
  - (iv) Best practices related to the provision of supported employment-community.
- (b) The training may be structured or unstructured and may include, but is not limited to, lectures, seminars, formal coursework, workshops, conferences, demonstrations, visitations or observations of other facilities/services/programs, distance and other means of electronic learning, video and audio-visual training, and staff meetings.
- (10) An agency provider shall ensure that a written record of training completed for each employee, contractor, and employee of a contractor who is engaged in direct provision of supported employment-community is maintained. The written record shall include a description of the training completed including a training syllabus and copies of training materials, the date of training, the duration of training, and the instructor's name, if applicable.
- (11) Failure to comply with this rule and rule 5123:2-2-01 of the Administrative Code may result in denial, suspension, or revocation of the provider's certification.

(D) Requirements for service delivery

- (1) Supported employment-community shall be provided pursuant to an individual service plan that conforms to the requirements of paragraph (H) of rule 5101:3-40-01 of the Administrative Code or paragraph (H) of rule 5101:3-42-01 of the Administrative Code, as applicable.
- (2) The service and support administrator shall ensure that an acuity assessment instrument is completed, the individual is assigned to a staff intensity group,

and a budget limitation is determined in accordance with rule 5123:2-9-19 of the Administrative Code when the need for supported employment-community has been identified through development of the individual service plan.

- (3) The service and support administrator shall ensure that documentation is maintained to demonstrate that the service provided as supported employment-community to an individual enrolled in a waiver is not otherwise available as vocational rehabilitation services funded under section 110 of the Rehabilitation Act of 1973, 29 U.S.C. 730, or as special education or related services as those terms are defined in section 602 of the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. 1401.
- (4) Supported employment-community, other than services and supports that assist an individual to achieve self-employment through the operation of a business as described in paragraph (B)(17)(b) of this rule, shall take place in a setting separate from any home or facility in which the individual receiving the services resides.
- (5) Supported employment-community services extend to those times when the individual is not physically present and the provider is performing supported employment-community on behalf of the individual (e.g., job development and placement).
- (6) An independent provider or appropriate staff of an agency provider shall be knowledgeable in benefits, work incentives, and employer tax credits for individuals with developmental disabilities and ensure that individuals served receive this information.
- (7) A provider of supported employment-community shall recognize changes in the individual's condition and behavior, report to the service and support administrator, and record the changes in the individual's written record.
- (8) A provider of supported employment-community shall report identified safety and sanitation hazards that occur at the worksite to employers having the responsibility to remedy the condition.

(E) Documentation of services

Service documentation for supported employment-community shall include each of the following to validate payment for medicaid services:

- (1) Type of service.

- (2) Date of service.
- (3) Place of service.
- (4) Name of individual receiving service.
- (5) Medicaid identification number of individual receiving service.
- (6) Name of provider.
- (7) Provider identifier/contract number.
- (8) Written or electronic signature of the person delivering the service, or initials of the person delivering the service if a signature and corresponding initials are on file with the provider.
- (9) Description and details of the services delivered that directly relate to the services specified and the goals established in the approved individual service plan, including:
  - (a) Results of formal and informal assessments (e.g., vocational evaluation, situational assessment, discovery process, and resource exploration);
  - (b) Progress notes relative to the individual's goals, job-seeking activities, and/or work performance (e.g., punctuality, attendance, hygiene, resume writing, and interview skills);
  - (c) Career exploration and employment planning activities and outcomes (e.g., job tryouts, interviews, volunteer opportunities, employers contacted, and job offers received);
  - (d) Job coaching/follow-along reports (e.g., goals addressed, skills developed, and natural supports identified or utilized); and
  - (e) Other outcomes (e.g., job placement, promotion, or change in duties).
- (10) Number of units of the delivered service or continuous amount of uninterrupted time during which the service was provided.

- (11) Times the delivered service started and stopped.
- (12) As applicable, the name of the individual's employer, the number of hours worked by the individual, and the hourly wage earned by the individual.

(F) Payment standards

- (1) The billing units, service codes, and payment rates for supported employment-community are contained in appendix A to this rule. Payment rates include an adjustment based on the county cost-of-doing-business category. The cost-of-doing-business category for an individual is the category assigned to the county in which the service is actually provided for the preponderance of time. The cost-of-doing-business categories are contained in appendix B to this rule.
- (2) Payment rates for supported employment-community are established separately for services provided by independent providers and services provided through agency providers.
- (3) The base rate paid to a provider of supported employment-community shall be adjusted to reflect the number of individuals sharing services.
- (4) Payment for adult day support, supported employment-community, supported employment-enclave, and vocational habilitation, alone or in combination, shall not exceed the budget limitations contained in appendix C to rule 5123:2-9-19 of the Administrative Code.

(G) Data reporting and analysis

- (1) The department shall develop a system that shall be used by providers, other than an independent provider who is an individual's coworker or otherwise employed at the worksite, to submit on a monthly basis, data regarding the provision and outcomes of supported employment-community, including but not limited to:
  - (a) Job placement rates;
  - (b) Duration of job placements;
  - (c) Hours worked by individuals; and

- (d) Wages earned by individuals.
- (2) The department shall make available reports generated from the data submitted.
  - (3) By January 1, 2014 and periodically thereafter, the department shall review the collected data and develop any changes necessary to ensure that the service as implemented is advancing employment outcomes for individuals served and that provider payment is consistent with efficiency, economy, and quality of care.

Effective:

Five Year Review (FYR) Dates: 07/20/2016

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Certification

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Date

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